





DEPARTMENT OF PERSONNEL

209 E. Musser Street, Room 101
Carson City, Nevada 89701-4204
(775) 684-0150
www.state.nv.us/personnel/

MEMO PERD #31/03
September 12, 2003

TO: Department Directors
Division Administrators

FROM: Jeanne Greene, Director
Department of Personnel

SUBJECT: SB 331 - INTERNAL ADMINISTRATIVE INVESTIGATIONS

Section 4 of Senate Bill 331, which became effective on July 1, sets out certain requirements of management when an employee is the subject of an internal administrative investigation. Specifically, an employee who is the subject of an internal administrative investigation that could lead to a suspension, demotion or dismissal must be given written notice of the allegations against him before he is questioned regarding the allegations. Additionally, the employee must be afforded the right to have an attorney or other representative present when he is questioned and granted at least two business days to obtain representation, if he so chooses.

The Department of Personnel has requested a legal analysis and opinion from Senior Deputy Attorney General James Spencer regarding the implementation of SB 331. In summary, Mr. Spencer provides the following guidance:

- Prior to notifying an employee of allegations and affording the employee his right to representation, it would be proper for the agency to gather sufficient information to substantiate a suspicion or accusation. This could include questioning other employees or witnesses and reviewing files and records that may support or refute allegations against an employee suspected of misconduct.
- Additionally, if the agency has gathered sufficient evidence from sources other than the employee to substantiate misconduct, the agency may simply serve the employee with a specificity of charges. If the agency doesn't need to question the employee, the right to

notice would not apply. However, in most instances, the employee would subsequently be entitled to pre-disciplinary protections under NAC 284.656 (1).

- NAC 284.656 (2) and (3) provide exceptions to the standard pre-disciplinary procedures if the appointing authority has reasonable cause to believe the retention of an employee on active duty poses a threat to life, limb or property or may be seriously detrimental to the interests of the State. Thus, the appointing authority may remove an employee from duty or from the workplace without providing the employee with notice. Once removed, however, the employee cannot be questioned about allegations of misconduct until notice is provided as required in Section 4 of SB 331.
- After providing the notice required under Section 4 of SB 331, the agency can schedule the questioning of an employee at any time once two business days have elapsed.

A copy of Mr. Spencer's opinion is enclosed for your review. However, it is important to emphasize that there can be many variables as well as extenuating circumstances when applying these guidelines to individual situations. Therefore, if there is a doubt as to whether a notice should be provided as required under Section 4 of SB 331, it would be prudent to provide the notice and/or confer with your Deputy Attorney General or legal counsel.

Also enclosed is a form that we have developed, with input from the Attorney General's Office, to provide appropriate notification to an employee who is the subject of an investigation. The first paragraph in the form provides space for documenting the allegations as required by SB 331. It is suggested that this documentation provide enough information to allow the employee to understand the general issues under investigation but should not be so specific that a new notice is needed if the investigation becomes broader as more information is gathered. This form is available on the Department of Personnel's website at www.dop.nv.gov.

I appreciate your patience during the analysis of these complex issues. I hope this information is helpful in the implementation of Section 4 of SB 331.

JG:cp

Enclosure

cc James T. Spencer, Sr. Deputy Attorney General, Nevada Department of Justice
Agency Personnel Liaisons

NOTICE OF INTERNAL INVESTIGATION

TO: [Employee Name]
FROM: [Supervisor/Manager/Administrator/Director/Agency Personnel Liaison]
DATE: September 12, 2003

This is to advise you that you are the subject of an internal administrative investigation relevant to the following allegation(s): [insert summary of allegation(s)].

You are scheduled for questioning regarding this/these allegation(s) at [time] on [date] located at [address/room].
Pursuant to Section 4 of SB 331 of the 2003 Legislature:

You have the right to have an attorney or other representative present when you are questioned regarding this/these allegation(s), and

You have up to two (2) business days to obtain an attorney or other representation, if you so choose

I waive my right to have a representative present.

I wish to have a representative present.

Employee Signature

Date

As you are aware, investigations are confidential. In order to protect your confidentiality, the rights of other employees and clients and the integrity of the investigation, you are requested not to communicate any information regarding this/these allegations(s) with other employees or persons who may have information pertinent to the investigation.

Thank you for your assistance and cooperation with this investigation.

cc Agency Personnel Liaison